STATE OF MICHIGAN

COURT OF APPEALS

PHILLIP P. SAPIENZA and BONNIE C. SAPIENZA, Plaintiffs-Appellants, v STU EVANS LINCOLN-MERCURY, LAKESIDE INC., Defendant-Appellee.	UNPUBLISHED June 16, 2009 No. 283734 Macomb Circuit Court LC No. 2007-000559-NO

Before: Fort Hood, P.J., and Cavanagh and K. F. Kelly, JJ.

PER CURIAM.

Plaintiffs appeal by right the summary dismissal of their slip and fall action.[1] We affirm.

According to the complaint, plaintiff went to defendant's to have his vehicle serviced and "as [he] was getting out of his car he stepped on a worn floor covered with a liquid substance and fell, causing him severe injury." Plaintiffs averred that the liquid substance on the floor constituted a dangerous condition and that defendant had actual or constructive knowledge of it.

In its subsequent motion for summary dismissal, defendant argued that plaintiffs could not establish that defendant had actual or constructive notice of the alleged dangerous condition. The evidence included that plaintiff did not see any substance on the floor, that many people walked through the area of plaintiff's fall on a regular basis and did not report any substance on the floor, and plaintiff's own vehicle could have caused any such substance to be on the floor.

In response to defendant's motion for summary disposition, plaintiffs argued that genuine issues of material fact existed as to whether defendant had actual or constructive knowledge of the dangerous condition. Testimony included that, on the day of the incident, there was a lot of water on the service floor which had been brought in by vehicles to this highly trafficked area. Further, plaintiff's own vehicle could not have caused the substance to be on the floor because on the day of the incident, the vehicle had been in a covered garage and the weather was clear and dry.

[1] Because plaintiff Bonnie C. Sapienza's claim is derivative, we refer to Phillip P. Sapienza as "plaintiff" in this opinion.

After oral arguments on the motion, the trial court agreed with defendant. Noting that plaintiffs were not claiming that defendant created the condition, the court turned to whether the evidence was sufficient to establish that defendant had actual or constructive notice of the condition. After reviewing the evidence, the court concluded that there was no evidence of actual notice and "there is nothing whatsoever to indicate how long the substance had been on the floor. It could have been on the floor for five hours or five minutes." Further, the court held, "[t]here is simply no evidence to establish that whatever plaintiff slipped on had been there for a sufficient duration to put defendant on notice." To find notice, the court continued, would require speculation and conjecture; accordingly, summary disposition was granted in defendant's favor.

On appeal, plaintiffs argue that summary dismissal of their claim on the ground that the evidence was insufficient to establish that defendant had actual or constructive notice of the dangerous condition was erroneous. After de novo review of the decision, considering the evidence in the light most favorable to plaintiffs to determine whether a genuine issue of material fact exists, we disagree. See MCR 2.116(C)(10); *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008); *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

An invitor is liable for injuries resulting from an unsafe condition caused by its active negligence, through an unreasonable act or omission. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). An invitor is also liable when it did not cause the dangerous condition but knew about it, or the condition was of such a character or had existed for such a length of time that the invitor should have known about it. *Id*.

Here, plaintiffs have not claimed that defendant created the dangerous condition. Instead, plaintiffs argue that defendant knew about it or should have known about it as evidenced by defendant's employee's testimony that, on the day of this incident, there was a lot of water on the service floor being brought in by vehicles. Further, the employee testified that the area at issue was a highly trafficked area of the floor. Plaintiffs argue, as they did in the trial court, that this evidence was sufficient to establish notice of the dangerous condition. But, like the trial court, we disagree with plaintiffs' argument. First, no evidence was presented that anyone, including plaintiff, actually saw the alleged dangerous condition where plaintiff fell. Therefore, there was no evidence that defendant had actual notice of this purported dangerous condition.

With regard to constructive notice of this alleged dangerous condition, as noted by the trial court, there was testimony from defendant's employee that it was routine practice to squeegee and vacuum the area where plaintiff fell several times a day when vehicles brought water onto the service floor. Plaintiff testified that no other vehicles were in the servicing area when he pulled his vehicle into the area and he did not see anything on the floor before he stepped out of his vehicle and fell. No evidence was presented that any other patron or employee had either seen or reported a dangerous condition in this highly trafficked area.

A party opposing a motion for summary dismissal must present more than conjecture and speculation to establish a genuine issue of material fact exists. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). Here, plaintiffs failed to present sufficient evidence from which it could be inferred that, either because of its character or the duration that it existed,

defendant had actual or constructive notice of the alleged dangerous condition. Therefore, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly